

² Appellant filed a timely request for oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedures*. 20 C.F.R. § 501.5(b). By order dated February 19, 2016, the Board exercised its discretion and denied her request as her arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-1638 (issued February 19, 2016).

FACTUAL HISTORY

This case has previously been before the Board. In a November 12, 2014 decision, the Board found that the medical evidence of record was insufficient to establish that total disability from January 13 to February 6, 2013 was caused or aggravated by the accepted conditions.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.⁴

On January 11, 2013 OWCP accepted appellant's claim for exacerbation of major depression, recurrent episode, moderate and exacerbation of anxiety state, unspecified.⁵ Appellant stopped work on August 21, 2011 due to a nonwork-related condition and returned to full-time modified duties in January 2012. She worked from January 2012 to April 22, 2012 when she stopped work completely. Appellant was on sick leave from April 22, 2012 to January 12, 2013 when she retired. On February 6, 2013 appellant filed a claim for compensation, Form CA-7, for leave without pay for total disability for the period January 13 to February 6, 2013. In a Form CA-7a, time analysis form, the employing establishment confirmed the hours of leave without pay and noted that appellant retired on January 12, 2013.⁶

Appellant was treated since August 2012 by Dr. Melanie Tew, a Board-certified psychiatrist. In a report dated May 15, 2013, Dr. Tew noted appellant's symptoms began in 2009 and she attempted to return to work in 2012 but was unsuccessful. She diagnosed major depression and panic disorder, conditions which tend to be relapsing and remitting. Dr. Tew noted that appellant continually reported symptoms despite aggressive medication management and that appellant was not recovering as she would expect. She questioned whether this was related to a stroke⁷ and opined that appellant's current level of functioning would persist for at least another year such that appellant could not perform any regular work duties. Dr. Tew indicated that appellant's stroke did occur when appellant was stressed in a work environment and her anxiety and depression were exacerbated by work stress. She opined that appellant was unable to perform any and all types of work-related daily activities.

³ Docket No. 14-1032 (issued November 12, 2014).

⁴ On June 12, 2012 appellant then a 62-year-old information technology (IT) specialist, filed an occupational disease claim (Form CA-2) alleging that she developed clinical depression and anxiety as a result of a greatly increased workload and excessive expectations by senior leaders beginning in 2009. She indicated that the working conditions exacerbated her existing clinical depression and anxiety and precipitated its worsening.

⁵ OWCP found the following events to be factors of employment: appellant was required to perform duties as a G6 acting chief when her manager was absent which increased her responsibilities and workload; appellant was required to work many hours of overtime due to her increased responsibilities and workload while performing the duties as a G6 acting chief; and she was required to deal with complaints and questions regarding slow network speed due to limitations as a result of technical realities of life in Saudi Arabia as part of her job.

⁶ Appellant stated on her CA-7 form that her retirement annuity had not yet started.

⁷ The record indicates that appellant had a subarachnoid hemorrhage in 2011. This has not been accepted as employment related.

OWCP denied appellant's claim for compensation on March 12, 2014. The Board affirmed OWCP's decision on November 12, 2014.⁸

On January 15, 2015 appellant, through counsel, requested reconsideration. In a March 10, 2014 report, Dr. Tew treated appellant for anxiety, depression, and panic attacks. She diagnosed major depressive affective disorder recurrent episode, moderate and anxiety state. Appellant reported her onset of anxiety was August 30, 2012. On April 21, 2014 Dr. Tew reported that appellant continued to struggle with anxiety and depression. Appellant reported that she was worried about her disability claim that was rejected. Dr. Tew noted that appellant was on a leave of absence from working as an IT specialist. She noted an essentially normal psychiatric examination and diagnosed major depressive affective disorder, recurrent episode moderate, and anxiety state unspecified. Dr. Tew opined that appellant continued to be very sensitive to stress and a return to work of any kind would lead to further exacerbation of her depression and anxiety. She opined that appellant's sensitivity to stress, depressive and anxious symptoms were disabling, and she should not return to work.

In a separate April 21, 2014 disability statement, Dr. Tew noted treating appellant since August 2012. Appellant reported her symptoms began in 2009 and she was unable to work consistently since 2009. In 2012 she unsuccessfully attempted to return to work. Dr. Tew diagnosed major depression and panic disorder. She noted that these conditions were relapsing and remitting. Dr. Tew reiterated that appellant was very sensitive to stress and had mild panic symptoms in minimally stressful situations. She advised that appellant was not recovering as she would expect and wondered if her condition was related to the stroke that she had during the onset of this illness. Dr. Tew noted that appellant was unable to perform all types of work-related activities. She opined that appellant's depression and anxiety caused her disability and were most likely triggered by stressful work environment in 2009 and her depression and anxiety continue to be disabling.

On June 19, 2014 Dr. Tew noted that appellant felt a little more motivated, and her mood was better, but she was still very sensitive to stress. She noted appellant's 2011 subarachnoid hemorrhage and her narcolepsy diagnosis 17 years earlier. Dr. Tew diagnosed major depressive affective disorder recurrent episode moderate.

In a decision dated February 18, 2015, OWCP denied modification of its November 12, 2014 decision, finding that the evidence was insufficient to establish disability.

On March 5, 2015 appellant again requested reconsideration. In reports dated January 15 and 21, 2015, Dr. Tew noted treating appellant since August 2012. Appellant reported that her symptoms began in 2009 and she has been unable to work consistently since 2009. Dr. Tew diagnosed major depression and panic disorder relapsing and remitting. She noted that appellant was very sensitive to stress and was not currently able to perform any regular work activities. Dr. Tew indicated that appellant's stroke occurred when she was stressed in a work environment, and her anxiety and depression were exacerbated by stress at work. She opined that appellant's panic disorder with agoraphobia was the main cause of her disability. Dr. Tew opined that the cerebral vascular accident experienced 2011 was not the primary cause of her disability and she

⁸ See *supra* note 3.

believed that returning to work would most likely be detrimental to appellant's overall health. Appellant also submitted evidence previously of record.

Appellant submitted a transcript of a deposition of Dr. Tew taken on March 19, 2015 in which Dr. Tew noted a history of appellant's treatment since 2012. Dr. Tew opined that from August 2012 to the present appellant was unable to perform a real job in the marketplace. She advised that both appellant's depression and panic disorder contributed to her disability. Dr. Tew opined that appellant's illness was related to extremely stressful working conditions. She opined that the stroke appellant experienced in 2011 was not the cause of her disability from work, rather, she indicated that the stroke resolved. Dr. Tew indicated that the stress of appellant's work was related to her depression "and likely caused" her depression to become so severe that she could not work. She noted that appellant had a difficult supervisor who was unrealistic in her demands and did not communicate in a manner that was respectful.

In a decision dated April 15, 2015, OWCP denied modification of its February 18, 2015 decision.

On April 20, 2015 appellant again requested reconsideration. She submitted the transcript of a deposition of Dr. Tew dated March 19, 2015, previously of record.

In a decision dated July 16, 2015, OWCP denied modification of its April 15, 2015 decision.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled from work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.⁹ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.¹⁰ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.¹¹ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.¹²

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden

⁹ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *Id.*

¹¹ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² C.S., Docket No. 08-2218 (issued August 7, 2009).

of establishing that he or she was disabled for work as a result of the accepted employment injury.¹³

ANALYSIS

OWCP accepted appellant's claim for exacerbation of major depression, recurrent episode, moderate and exacerbation of anxiety state, unspecified. Appellant stopped work on August 21, 2011 due to a nonwork-related condition and returned to full-time modified duties in January 2012. She worked from January 2012 to April 22, 2012 when she stopped work completely. Appellant was on sick leave from April 22, 2012 to January 12, 2013 when she retired. She then claimed wage-loss compensation from January 13 to February 6, 2013. On November 12, 2014 the Board affirmed OWCP's decision dated March 12, 2014 denying appellant's claim for total disability. Appellant requested reconsideration. The Board finds that the medical evidence submitted was insufficient to establish that total disability for the period January 13 to February 6, 2013, causally related to her accepted conditions.

Appellant submitted reports from Dr. Tew dated March 10 and April 21, 2014, which noted that appellant continued to struggle with anxiety and depression. Dr. Tew diagnosed major depressive affective disorder, recurrent episode moderate, and anxiety state unspecified. She opined that appellant's sensitivity to stress, depressive and anxious symptoms were disabling. On June 19, 2014 Dr. Tew noted that appellant had a subarachnoid hemorrhage in 2011 and was on a leave of absence from work. She diagnosed major depressive affective disorder recurrent episode moderate. While Dr. Tew indicated that appellant was totally disabled from work, she did not specifically explain how the accepted exacerbation of major depression, recurrent episode, moderate and exacerbation of anxiety state, unspecified caused or contributed to the total disability from January 13 to February 6, 2013.

In reports dated April 21, 2014, January 15 and 21, 2015, Dr. Tew noted that appellant reported her symptoms and intermittent disability began in 2009. She opined that appellant's depression and anxiety caused her disability and were most likely triggered by a stressful working environment in 2009. Dr. Tew opined that the cerebral vascular accident experienced in 2011 was not the primary cause of her disability and that returning to work would be detrimental to her overall health. While she opined that appellant was totally disabled, she did not specifically address the cause of any periods of disability beginning January 13 to February 6, 2013 or explain how any period of disability between January 13 to February 6, 2013 was employment related. Rather, Dr. Tew indicated that appellant was not recovering as she would expect and questioned whether this was related to her stroke, which was not work related. Appellant has the burden of proof to submit rationalized medical evidence which supports a causal relationship between the period of disability and the accepted injury.¹⁴ These reports are insufficient to meet appellant's burden of proof.

Appellant also submitted a transcript of a deposition taken of Dr. Tew on March 19, 2015 in which Dr. Tew noted a history of appellant's treatment. Dr. Tew opined that from

¹³ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁴ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

August 2012 to the present time, appellant had been unable to perform a real job in the marketplace. She advised that both appellant's depression and panic disorder contributed to her disability. Dr. Tew opined that appellant's illness was related to extremely stressful work conditions. She further noted that appellant's 2011 stroke was not the cause of her disability. Rather, the stress of appellant's work "and likely caused" her depression to become so severe that she could not work. While Dr. Tew noted that appellant was totally disabled and her panic disorder and depression were related to stressful work conditions, she did not fully explain how appellant's disability from work from January 13 to February 6, 2013 was causally related to her accepted conditions. Moreover, her opinion is couched in speculative terms and thus is insufficient to meet appellant's burden of proof.¹⁵

On appeal appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed and referenced Dr. Tew's report. She contends that Dr. Tew provided the necessary medical report and opinion that appellant was not unable to perform her job duties on January 13, 2013. The Board notes that while Dr. Tew opined that appellant was totally disabled from work, she did not specifically explain how any disability from January 13 to February 6, 2013 was employment related.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish total disability for the period January 13 to February 6, 2013, causally related to the accepted employment injury.

¹⁵ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must be speculative or equivocal. See *K.G.*, Docket No. 15-0669 (issued April 8, 2016); *Ricky S. Storms*, 52 ECAB 349 (2001).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board